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May 23,2007

VIA ELECTRONIC FILING ***EX PARTE NOTICE***

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

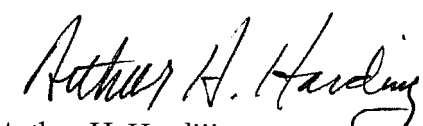
Re: ***Telecommunications Services Inside Wiring, Customer Premises Equipment*, CS Docket No. 95-184; *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, MM Docket No. 92-260**

Dear Ms. Dortch:

On May 22,2007, Steven N. Teplitz and Susan A. Mort of Time Warner Iiic., Gary R. Matz and Stephen R. Fry of Time Warner Cable Inc. ("Time Warner Cable"), and the undersigned of Fleischman and Walsli, L.L.P., met separately with 1) Ian Dillner, legal advisor to Chairman Martin; 2) Rick Chessen, legal advisor to Commissioner Copps; 3) Rudy Brioché, legal advisor to Commissioner Adelstein; 4) Nicholas Alexander, legal advisor to Coinmissioner Tate; 5) Cristina Chou Pauzé, legal advisor to Coinmissioner McDowell; and 6) Rosemary Harold, Mary Beth Murphy, Holly Saurer, and Allison Kelley of the Media Bureau. The presentations, as set forth in the attached summary, addressed Time Warner Cable's position with respect to certain issues raised in the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceedings.

In accordance with Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this notice is being submitted for inclusion in the record of each of the above-referenced proceedings.[1]

Respectfully submitted,



Arthur H. Hardiiig
Counselfor Time Warner Cable Inc.

cc: Ian Dillner, Rick Chessen, Rudy Brioché, Cristina Chou Pauzé, Nicholas Alexander, Roseinary Harold, Mary Beth Murphy, Holly Saurer, Allison Kelley

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[1] 47 C.F.R. § 1.1206(b)(2).

Competitors Should Not Be Allowed to Confiscate Wiring Belonging to the Cable Operator Installed Behind Sheet Rock in MDUs

PROCEDURAL HISTORY

- In 1997, the FCC initially established a clear demarcation point for MDU wiring -- at or about twelve inches from where the wiring enters each individual MDU unit. This demarcation point serves to protect the cable operator's ownership interest in "home run" wiring on the provider's side of tlie deinarcatioii point, while allowing essentially unfettered use by consumers of the "home wiring" within individual MDU units.

- The nile contained an exception for wiring that was "physically inaccessible" -- defined to include wiring embedded in concrete or in metal conduits -- situations where accessing tlie wiring is virtually impossible. In those cases, tlie demarcation point between the home run wiring and home wiring moves to "tlie closest practicable point thereto that does not require access to an individual subscriber's dwelling unit," typically the junction box located hundreds of feet or more outside the customer's unit.

- In 2003, the FCC abruptly changed course and ruled MDU wiring behind sheet rock is also "physically inaccessible." The practical effect of expanding tlie exception is to deem virtually all MDU wiring "physically inaccessible."

- The D.C. Circuit remanded, finding that there was no evidence in tlie record to support the conclusion that cutting and repairing a small hole in sheet rock would cause "significant" damage to the building.

- In 2004, the FCC released a Further Notice, in response to tlie D.C. Circuit remand, to develop record evidence to support any revised rule ultimately adopted.

RECORD EVIDENCE DOES NOT SUPPORT A FINDING THAT A CABLE OPERATOR'S WIRING BEHIND SHEET ROCK IS "INACCESSIBLE"

- Cable interests submitted sworn declarations from nine experts with collective experience of over 80 years involving cable installations behind sheet rock.

- The record evidence conclusively demonstrates that accessing cable wiring behind sheet rock is:

  -- common and routine,
  -- simple,
  -- quick,
  -- inexpensive, and
  -- can be accomplished without structural or esthetic damage.

- While opposing declarations have been submitted, primarily from building management/ supervisory executives, none allege actual first-hand field experience in either sheet rock cutting and repair or cable TV wiring installation, in contrast to the declarations from the nine cable installation experts.

- The opposing declarations merely assert that sheet rock cuts are "inconvenient" or "undesirable," and that building owners generally oppose sheet rock cuts.

- Notably, none of tlie opposing declaratioiis allege that sheet rock cuts are impossible, nor do they report a single instance of permanent structural damage or physical injury resulting from a sheet rock cut.

- On tlie current record, aii FCC finding that wiring behind sheet rock is "inaccessible" would once again be reversed on appeal.

FINDING CABLE WIRING INSTALLED BEHIND SHEET ROCK TO BE "INACCESSIBLE" WOULD RAISE SERIOUS LEGAL ISSUES

- Under Section 624(i), tlie FCC's jurisdiction in this area is limited to wiring "installed by the cable operator within the premises of such subscriber."

- The FCC has no jurisdiction over cable home mi wiring installed behind sheet rock running hundreds of feet or more outside of tlie subscriber's premises.

- A finding of "inaccessibility" would constitute an unconstitutional taking of a cable operator's property without just compensation.

- The FCC has no authority to impose regulatory takings. *See Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994).

THERE ARE SEVERAL IMPORTANT DISTINCTIONS BETWEEN ACCESSING TELEPHONE SUB-LOOPS AT THE TERMINAL BLOCK VS. ACCESSING CABLE HOME RUN WIRING AT THE LOCKBOX

- If tlie security of a cable loclcbox in an MDU is breached, any former customer can easily steal service by simply screwing the disconnected home run back on the tap. No such theft of service issues arise when telephone twisted pair is discoimected at the NID because telephone dial tone is discoimected at tlie central office -- telephone service cannot be stolen by restoring a connection at the NID.

- Improper termination of cable service can cause dangerous signal leakage that can result in risk to aircraft iiavigatioii and other critical public safety functions. Irnproper termination of telephone service creates no such risks. Because the incumbent cable operator can be held respoiisible for leakage from its plant, the operator obviously has a very significant interest in ensuring that its cable service is terminated properly.

- In tlie telephone context, where access to ILEC sub-loops is achieved at the terminal block or NID in MTEs, the incumbent retains ownership of its wire and can impose tariffed, recurring per-line fees for use of tlie inside wiring sub-loops. On the other hand, if cable home run wiring behind sheet rock is deemed "inaccessible," the cable operator's facilities could be confiscated for the benefit of a competitor, without just coinpeiisation to account for not only tlie capital costs, but also the lost opportunity costs fi-om the inability of the incumbent to offer otlier services over that wire to tlie affected MDU resident.

- Where a competitor is allowed to use an incumbent telephone company's sub-loops, connectioiis must be accomplished according to reasonable standards and practices established by the incumbent. While FCC rules require a competing MVPD to take precautions to avoid signal leakage when terminating an incumbent's cable service, there is no rule requiring the coinpetitor to refrain fi-om damaging the incumbent's lock box or otlier property, or otherwise requiring tlie competitor to follow established standards and practices.

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